

Message Text

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ACTION SCS-03

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O R 030728Z SEP 75
FM AMCONSUL SURABAYA
TO AMEMBASSY JAKARTA IMMEDIATE
INFO SECSTATE WASHDC 0653

LIMITED OFFICIAL USE SURABAYA 0541

E.O. 11652: N/A (DECONTROL ON RECEIPT)

TAGS: CASC, ID (ANDERSON, STEPHEN PHILIP; GREGORY, BRUCE;
SHORT, KATHLEEN; VEGA, CAROL LUCILLE;
HIGHAM, WILLIAM EVANS; BALTZELL, CHARLES HUIE)
SUBJECT: ARREST OF SIX AMERICANS: CONSIDERATION FOR
DIPLOMATIC INTERVENTION

REF: SURABAYA 0530 AND PREVIOUS

SUMMARY. BELIEVE THAT EMBASSY INTERVENTION IS CALLED FOR
IN SUBJECT CASE BECAUSE: THE SUBJECTS WERE NOT AFFORDED
AN OPPORTUNITY TO MOUNT A DEFENSE; THROUGHOUT THE TRIAL
A BASIC TENET OF THE LAW IN QUESTION WAS NEVER RAISED, I.E.
WILLFUL INTENT; THE SUBJECTS HAVE ALREADY BEEN DETAINED,
THOUGH NOT IN JAIL, FOR OVER SIX WEEKS AND NO RESOLUTION
IS IN SIGHT; CONSULAR OFFICERS HAVE BEEN DENIED - AS HAVE
SUBJECTS - ACCESS TO KNOWLEDGE PERTINENT TO THE CASE. THIS
ENTIRE SEQUENCE OF EVENTS HAS POSSIBLY COST THREE DEFENDANTS
THEIR JOBS AND HAS PLACED AN UNDUE AMOUNT OF EMOTIONAL
AND FINANCIAL STRESS ON EACH ONE -- A HARSH PENALTY FOR
WHAT AT BEST COULD BE CONSIDERED A MISDEMEANOR. END
SUMMARY.

1. REQUEST THAT THE EMBASSY CONSIDER INTERVENING IN SUBJECT
CASE IN THAT THE ARRESTED AMERICAN CITIZENS' RIGHTS TO EQUITABLE
JUDICIAL PROCESS WERE AND CONTINUE TO BE VIOLATED. BELIEVE
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THIS TO BE TRUE FOR THE FOLLOWING REASONS:

A. THE SUBJECTS WERE NEVER GIVEN ADEQUATE NOTICE THAT NUDE
OR SEMI-NUDE SBNBATHING WAS A CRIME IN BALI. THIS PRACTICE HAS

BEEN OCCURRING IN BALI FOR THE LAST SEVERAL YEARS, AND ONLY OCCASIONAL INCIDENTS OF DEPORTATION HAD EVER HAPPENED IN THE PAST. THERE IS ONLY ONE SIGN IN THE KUTA BEACH AREA STATING THAT SUCH CONDUCT IS PROHIBITED (NONE IN THE LEGIAN AREA). THAT ONE SIGN IS IN THE INDONESIAN LANGUAGE AND IS POSTED AT THE MAIN ENTRANCE AREA OF THE BEACH AT KUTA. MOST OF THE SUBJECTS WERE FOUND UNCLOTHED AT DISTANCES UP TO TWO MILES FROM THE SIGN IN ISOLATED AREAS OF THE BEACH.

B. THE SUBJECTS ARE PICKED UP IN THE LEGIAN-KUTA BEACH AREA IN A SURPRISE RAID BY A POLICE TEAM UNDER THE AUTHORITY OF THE BALI PROVINCE JAKSA NEGERI (PROSECUTOR) DJOKO MULYO. FIRST A TEAM OF PLAINCLOTHESMEN SWEEP THE BEACH TAKING PICTURES OF THE SUBJECTS. THEN UNIFORMED POLICE APPREHENDED THEM. THEIR PASSPORTS WERE CONFISCATED IMMEDIATELY. THEY WERE DETAINED AT THE POLICE STATION ONLY LONG ENOUGH FOR REPORTS TO BE FILLED OUT, THEN RELEASED ON THEIR OWN RECOGNIZANCE.

C. THE SUBJECTS WERE KEPT TOTALLY IGNORANT OF THE SPECIFIC CHARGES AGAINST THEM. IT WAS NOT UNTIL JUST BEFORE THE TRIAL THAT THEY WERE INFORMED OF THESE CHARGES. THEIR LEGAL SITUATION WAS NEVER EXPLAINED TO THEM IN DETAIL. WHEN THEY REQUESTED THE PROSECUTOR'S OFFICE INFORM THE AMERICAN EMBASSY IN JAKARTA OF THEIR SITUATION, THESE REPEATED REQUESTS WERE DENIED.

D. THE SUBJECTS WERE PROVIDED WITH A COURT APPOINTED LAWYER, SAM NASRIL, S.H., IMMEDIATELY BEFORE THE FIRST TRIAL SESSION ON AUGUST 1 (NASRIL IS RELATED BY MARRIAGE TO PROSECUTOR DJOKO). A WEEK BEFORE THE DECISION OF THE APPELLATE COURT WAS MADE (AUGUST 20), NASRIL WAS PAID \$400 BY THE DEFENDANTS, AND SINCE THAT TIME THE DEFENDANTS HAVE NOT BEEN ABLE TO CONTACT HIM.

E. THE COURT NEVER OFFICIALLY SWORE IN THE INTERPRETER FOR THE TRIAL SESSIONS (OF AUGUST 1 AND 4).

F. THE DEFENDANTS WERE ARRESTED SINGLY OR IN GROUPS OF TWO
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ALONG THE TWO MILE LENGTH OF BEACH. THEY WERE CHARGED INDIVIDUALLY, NOT COLLECTIVELY, OF VIOLATING LAW KUHP PASAL 281. BUT, THEY WERE TRIED, AS WELL AS SENTENCED, COLLECTIVELY.

G. THE LAW UNDER WHICH THEY WERE CHARGED REQUIRES INTENT TO BE PUBLICLY INDECENT AS A BASIS OF PROOF OF THE VIOLATION OF THAT LAW. AT NO POINT IN THE TRIAL PROCEEDINGS WAS INTENT MENTIONED BY ANY PARTY OR WAS PROOF OF INTENT ESTABLISHED. (EXACT WORDING OF THE LAW IS "WHOSOEVER WILLFULLY DAMAGES PUBLIC DECENCY OR COMMITS AN ACT OF IMMORALITY IN FRONT OF A PERSON WHO WITNESSES IT INVOLUNTARILY, SHALL BE SENTENCED TO UP TO 2 YEARS AND 8 MONTHS IN JAIL OR FINED

AS MUCH AS RP4,500". NOTE, THE AMOUNT OF THE FINE IS IN OLD RUPIAHS.)

H. THE APPELLATE COURT DECISION WAS HANDED DOWN ON AUGUST 20. IN IT THE CHARGES WERE DISMISSED LARGELY ON PROCEDURAL ERROR (SPECIFICALLY THOSE ERRORS MENTIONED IN E, F, AND G ABOVE).

I. THE BALI HIGH PROSECUTOR, PANOENSUNAN NASUTION DECIDED TO APPEAL THE DECISION OF THE BALI HIGH COURT TO THE SUPREME COURT IN JAKARTA, A PROCESS WHICH BY HIS OWN ADMISSION COULD TAKE UP TO THREE MONTHS. SINCE APPEALS PROCESS HAS NOT BEEN COMPLETED DEFENDANTS HAVE NOT YET BEEN IMPRISONED, BUT BALINESE AUTHORITIES UNDER THE DIRECTION OF THE PROSECUTOR'S OFFICE HAVE RETAINED THEIR PASSPORTS.

J. SINCE AUGUST 7, AMERICAN CONSULATE OFFICERS HAVE REPEATEDLY TRIED TO OBTAIN INFORMATION ABOUT THE TRIAL AND LATER THE APPEAL FROM THE STATE PROSECUTOR AND THE HIGH PROSECUTOR. EACH REQUEST TO HIS OFFICE HAS BEEN PREREMPTORILY DENIED BY NASUTION, WHO HAS STATED THAT WE MUST CONTACT THE SUPREME COURT IN JAKARTA FOR FURTHER INFORMATION. HE HAS REFUSED TO TELL US IF THE APPEAL HAS BEEN SUBMITTED (BELIEVE IT HAS NOT YET GONE FORWARD), TO WHAT SECTION IN THE NATIONAL COURT SYSTEM IT IS TO BE SUBMITTED, OR WHICH SECTION IN THE NATIONAL ATTORNEY GENERAL'S OFFICE WILL HANDLE THE APPEAL.

K. INCIDENTS OF NUDISM AND SEMI-NUDISM CONTINUE TO OCCUR IN THE LEGIAN-KUTA BEACH AREA. THERE HAVE BEEN NO FURTHER ARRESTS BY LIMITED OFFICIAL USE
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THE POLICE.

2. COMMENT: THE INTRANSIGENCE OF PROSECUTOR NASUTION TO ALL QUERIES AS WELL AS HIS DOGGED DECISION TO APPEAL THIS MINOR CASE TO THE SUPREME COURT INDICATES THAT PERHAPS HE IS INFLUENCED BY CRACKDOWN POLICIES DICTATED FROM JAKARTA. BELIEVE THAT HE POSSIBLY HAS INTERPRETED SUCH POLICIES TOO LITERALLY AND HAS INJECTED HIS PERSONAL FEELINGS INTO THE CASE. YOU MAY WISH TO INVESTIGATE SOURCE OF GET-TOUGH POLICY IN JAKARTA AND DETERMINE IF BALI PROSECUTOR HAS OVERSTEPPED HIS MANDATE.
CHRISTY

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